

**Letter of Findings Number: 04-20120689**  
**Use Tax**  
**For the Years 2009-2011**

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**ISSUE**

**I. Use Tax—Imposition.**

**Authority:** IC § 6-2.5-1-1; IC § 6-2.5-1-2; IC § 6-2.5-3-2; IC § 6-2.5-3-3.

Taxpayer protests the Department's assessment of use tax on software maintenance contracts.

**STATEMENT OF FACTS**

Taxpayer is a company doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that Taxpayer did not self-assess use tax on various items. The Department assessed use tax on these items. Taxpayer protested a portion of the assessment, the Department conducted an administrative hearing, and this Letter of Findings results. Additional facts will be supplied as necessary.

**I. Use Tax—Imposition.**

**DISCUSSION**

Taxpayer protests the assessment of use tax on computer software maintenance agreements. Taxpayer does not protest the entire value assessed. Instead, Taxpayer protests that a portion of the agreements represented services such as phone support. The issue is whether the entire listed price of the maintenance agreements is subject to use tax or the portion for software. Solely for purposes of discussion, it is assumed that the software provider's breakdown of costs is accurate.

In general, IC § 6-2.5-3-2 provides for the imposition of use tax "on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction."

IC § 6-2.5-1-1(a) provides "[e]xcept as provided in subsection (b) [related to utility services], 'unitary transaction' includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated.

IC § 6-2.5-1-2 states:

(a) "Retail transaction" means a transaction of a retail merchant that constitutes selling at retail as described in [IC 6-2.5-4-1](#), that constitutes making a wholesale sale as described in [IC 6-2.5-4-2](#), or that is described in any other section of [IC 6-2.5-4](#).

(b) "Retail unitary transaction" means a unitary transaction that is also a retail transaction.

IC § 6-2.5-3-3 states:

The use tax is measured by the gross retail income received in a retail unitary transaction and is imposed at the same rates as the state gross retail tax under [IC 6-2.5-2-2](#). For purposes of this chapter, transactions described in [IC 6-2.5-3-2](#)(b) and (c) shall be treated as retail transactions within the meaning of [IC 6-2.5-1-2](#).

In Taxpayer's case, Taxpayer was charged one price for the software maintenance contracts. Under IC § 6-2.5-1-1(a), the purchase of the contracts constituted unitary transactions for sales and use tax purposes. Thus, use tax was properly due on the entire value of the contract rather than the portion which was estimated after purchase to represent property as opposed to services.

**FINDING**

Taxpayer's protest is respectfully denied.

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